

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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NEWARK EXTENDED CARE,

Employer,

1199 SEIU, UNITED HEALTHCARE WORKERS EAST,
NEW JERSEY REGION,

Petitioner,

LOCAL 707 HEALTH EMPLOYEES ALLIANCE, RIGHTS
AND TRADES,

Intervenor.

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INTERVENOR'S EXCEPTIONS

Intervenor Local 707 Health Employees Alliance, Rights and Trades (hereinafter "Local 707")

submits the following Exceptions to the Report and Recommendation of Administrative Law Judge

Steven Davis, issued August 2, 2011:

1. The ALJ recommends a misapplication of case law with respect to false statements made by Petitioner 1199 SEIU concerning an audit report by the United States Department of Labor (hereinafter "USDOL"). These statements were misrepresented under the auspices of the USDOL audit and had a serious impact upon the bargaining unit and the election results.
2. The ALJ erroneously disregarded the objection and evidence in support of the objection that the Employer's agents were campaigning for 1199 SEIU on election day, by (a) characterizing the objection based on statements by the nursing home gift shop manager as "unalleged conduct", (b) erroneously assuming it was withdrawn as part of Objection #4, and (c) by stating that David Serrano merely "work" in gift shop when unrebutted substantial evidence in the record established that he ran and managed the gift shop for the Employer.
3. Erroneously finding that, treated separately, each instance of campaigning and support by agents of the Employer had an insufficient impact on voters, while ignoring the totality of the violations and their corroboration of the inference that the Employer overtly supported SEIU 1199 such as (a) Employer's desire to avoid further withdrawal liability to SEIU pension fund (as stated by SEIU staffers), (b) the Employer's treatment of Local 707 and refusal to schedule grievances after imposition of withdrawal liability; and (c) conduct of Employer's agents such as the security guard, gift shop manager and supervisors on election day.
4. Erroneously finding that the Employer's documented failure to schedule grievances and failure to fully execute its promise to reimburse employees for medical bills, in resolution of grievance that health insurance plan was not comparable to predecessor

plan, did not cause disaffection among the bargaining unit when the record establishes that (a) 1199 SEIU campaigned the slogan "Local 707 why so long for grievances" and (b) disaffection based failure to provide promised reimbursement is self-evident. Documentation shows that although Employer paid some bills as promised, it stopped reimbursements a few months before election.

5. Erroneously finding that Marie St. Louis did not intentionally sabotage employee's grievances entrusted to her as a delegate, when evidence conclusively established that she openly supported 1199, lied in her capacity as delegate and reported to management what transpired at union delegate meetings.
6. Erroneously treating Employer's security guard (agent as a matter of law) as a "third-party and thus minimizing the affect of statements ("vote 1199") on voters.
7. Erroneously attributing inconsistent testimony to Odette Machado, President of Local 707, regarding receipt of a rest room key, when in fact it was the security guard who was inconsistent based on the testimony of Jacqueline Allen who testified that she handed the key to Machado , and not the security guard as the security guard testified (i.e. ALJ got it backwards).
8. Erroneously finding that parking the SEIU lettered bus where it was visible from the break room window was not a violation of the no electioneering rule because it was "not in the area established by the Board Agent," when it still constituted campaigning on election day. ALJ also erroneously stated that only "two voters" saw the bus from the election area. Two witnesses testified to that fact and further testimony was not necessary and would have been cumulative. It was sufficient to establish that the bus and large SEIU lettering was visible from the election area, where obviously all voters were present to vote.
9. Erroneously disregarded proven instances of campaigning in the workplace on election day by stating that it was the Employer's responsibility" to regulate conduct outside the election area ("break room") and by failing to state in his Decision why the wearing of 1199 SEIU tee-shirts and jackets in the election area was not a violation.
10. Erroneously minimizing the impact upon voters of 1199 SEIU supporters actively campaigning on election day, especially when the impact of such conduct is considered together with the conduct of agents of the Employer and SEIU 199 staffers on election day.

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STATEMENT OF SERVICE

NEWARK EXTENDED CARE

CASE No. 22-RC-13203

A Copy of Intervenor's Exceptions to Report of ALJ on Objections has been served by electronic means (email or fax) upon the following persons:

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Dated: August 12, 2011

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